

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

EDWARD A. MCCARTHY,
PLAINTIFF

Civil Action No:
04-10335-RWZ

VS.

MCLANE COMPANY, INC.,
CONSTRUCTION MANAGEMENT
TECHNOLOGY AND
LINCOLN FRANKLIN, LLC.,
DEFENDANTS

ANSWER AND JURY CLAIM OF THE DEFENDANT,
LINCOLN FRANKLIN, LLC., TO THE PLAINTIFF'S FIRST AMENDED COMPLAINT

PARTIES

1. The defendant is without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained in paragraph 1 of the plaintiff's first amended complaint.

2. The defendant is without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained in paragraph 2 of the plaintiff's first amended complaint.

3. The defendant is without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained in paragraph 3 of the plaintiff's first amended complaint.

4. The defendant denies the allegations contained in paragraph 4 of the plaintiff's first amended complaint.

COUNT I:
NEGLIGENCE OF THE DEFENDANT, MCLANE

5. The defendant neither admits nor denies the allegations contained in paragraph 5 of the plaintiff's first amended complaint as the allegations do not pertain to this defendant.

6. The defendant neither admits nor denies the allegations contained in paragraph 6 of the plaintiff's first amended complaint as the allegations do not pertain to this defendant.

7. The defendant neither admits nor denies the allegations contained in paragraph 7 of the plaintiff's first amended complaint as the allegations do not pertain to this defendant.

8. The defendant is without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained in paragraph 8 of the plaintiff's first amended complaint.

9. The defendant is without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained in paragraph 9 of the plaintiff's first amended complaint.

10. The defendant is without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained in paragraph 10 of the plaintiff's first amended complaint.

11. The defendant neither admits nor denies the allegations contained in paragraph 11 of the plaintiff's first amended complaint as the allegations do not pertain to this defendant.

12. The defendant denies any allegations contained in paragraph 12 of the plaintiff's first amended complaint relative to the presence of an unnatural accumulation of snow and ice and any allegations relating to the existence of any icy conditions in the parking lot and lacks sufficient information to admit or deny the remaining allegations in this paragraph.

13. The defendant denies the presence of ice alleged in this paragraph of the plaintiff's first amended complaint and neither admits nor denies the remaining allegations contained in this paragraph as they relate to another defendant.

14. The defendant denies the allegations contained in paragraph 14 of the plaintiff's first amended complaint.

15. The defendant denies the allegations contained in paragraph 15 of the plaintiff's first amended complaint.

16. The defendant denies the allegations contained in paragraph 16 of the plaintiff's first amended complaint.

17. The defendant denies the allegations contained in paragraph 17 of the plaintiff's first amended complaint.

18. The defendant denies the allegations contained in paragraph 18 of the plaintiff's first amended complaint.

19. The defendant neither admits nor denies the allegations contained in paragraph 19 of the plaintiff's first amended complaint as the allegations do not pertain to this defendant.

20. The defendant neither admits nor denies the allegations contained in paragraph 20 of the plaintiff's first amended complaint as the allegations do not pertain to this defendant. To the extent that the allegations do pertain to this defendant the defendant denies the allegations contained in this paragraph.

21. The defendant neither admits nor denies the allegations contained in paragraph 21 of the plaintiff's first amended complaint as the allegations do not pertain to this defendant. To the extent that the allegations do pertain to this defendant the defendant denies the allegations contained in this paragraph.

22. The defendant neither admits nor denies the allegations contained in paragraph 22 of the plaintiff's first amended complaint as the allegations do not pertain to this defendant. To the extent that the allegations do pertain to this defendant the defendant denies the allegations contained in this paragraph.

WHEREFORE, the defendant denies that the plaintiff is entitled to recovery in any amount.

COUNT II:
NEGLIGENCE OF THE DEFENDANT, CMT

23. The defendant repeats and realleges its responses to paragraphs 1 through 22 of the plaintiff's first amended complaint with the same force and effect as if more fully set forth herein.

24. The defendant is without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained in paragraph 24 of the plaintiff's first amended complaint.

25. The defendant neither admits nor denies the allegations contained in paragraph 25 of the plaintiff's first amended complaint as the allegations do not pertain to this defendant.

26. The defendant is without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained in paragraph 26 of the plaintiff's first amended complaint.

27. The defendant is without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained in paragraph 27 of the plaintiff's first amended complaint.

28. The defendant is without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained in paragraph 28 of the plaintiff's first amended complaint.

29. The defendant is without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained in paragraph 29 of the plaintiff's first amended complaint.

30. The defendant neither admits nor denies the allegations contained in paragraph 30 of the plaintiff's first amended complaint as the allegations do not pertain to this defendant. To the extent that the allegations do pertain to this defendant, the defendant denies the allegations contained in this paragraph.

31. The defendant neither admits nor denies the allegations contained in paragraph 31 of the plaintiff's first amended complaint as the allegations do not pertain to this defendant. To the extent that the allegations do pertain to this defendant, the defendant denies the allegations contained in this paragraph.

32. The defendant neither admits nor denies the allegations contained in paragraph 32 of the plaintiff's first amended complaint as the allegations do not pertain to this defendant. To the extent that the allegations do pertain to this defendant, the defendant denies the allegations contained in this paragraph.

33. The defendant denies the allegations contained in paragraph 33 of the plaintiff's first amended complaint.

34. The defendant neither admits nor denies the allegations contained in paragraph 34 of the plaintiff's first amended complaint as the allegations do not pertain to this defendant. To

the extent that the allegations do pertain to this defendant, the defendant denies the allegations contained in this paragraph.

35. The defendant denies the allegations contained in paragraph 35 of the plaintiff's first amended complaint.

36. The defendant denies the allegations contained in paragraph 36 of the plaintiff's first amended complaint.

37. The defendant denies the allegations contained in paragraph 37 of the plaintiff's first amended complaint.

38. The defendant neither admits nor denies the allegations contained in paragraph 38 of the plaintiff's first amended complaint as the allegations do not pertain to this defendant.

39. The defendant neither admits nor denies the allegations contained in paragraph 39 of the plaintiff's first amended complaint as the allegations do not pertain to this defendant. To the extent that the allegations do pertain to this defendant, the defendant denies the allegations contained in this paragraph.

40. The defendant neither admits nor denies the allegations contained in paragraph 40 of the plaintiff's first amended complaint as the allegations do not pertain to this defendant. To the extent that the allegations do pertain to this defendant, the defendant denies the allegations contained in this paragraph.

41. The defendant neither admits nor denies the allegations contained in paragraph 41 of the plaintiff's first amended complaint as the allegations do not pertain to this defendant. To the extent that the allegations do pertain to this defendant, the defendant denies the allegations contained in this paragraph.

WHEREFORE, the defendant denies that the plaintiff is entitled to recovery in any amount.

COUNT III:
NEGLIGENCE OF THE DEFENDANT, LINCOLN FRANKLIN, LLC.

42. The defendant repeats and realleges its responses to paragraphs 1 through 41 of the plaintiff's first amended complaint with the same force and effect as if more fully set forth herein.

43. The defendant denies the allegations contained in paragraph 43 of the plaintiff's first amended complaint.

44. The defendant is without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained in paragraph 44 of the plaintiff's first amended complaint.

45. The defendant is without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained in paragraph 45 of the plaintiff's first amended complaint.

46. The defendant is without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained in paragraph 46 of the plaintiff's first amended complaint.

47. The defendant is without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained in paragraph 47 of the plaintiff's first amended complaint.

48. The defendant is without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained in paragraph 48 of the plaintiff's first amended complaint.

49. The defendant denies the allegations contained in paragraph 49 of the plaintiff's first amended complaint.

50. The defendant denies the allegations contained in paragraph 50 of the plaintiff's first amended complaint.

51. The defendant denies the allegations contained in paragraph 51 of the plaintiff's first amended complaint.

52. The defendant denies the allegations contained in paragraph 52 of the plaintiff's first amended complaint.

53. The defendant denies the allegations contained in paragraph 53 of the plaintiff's first amended complaint.

54. The defendant denies the allegations contained in paragraph 54 of the plaintiff's first amended complaint.

55. The defendant denies the allegations contained in paragraph 55 of the plaintiff's first amended complaint.

56. The defendant denies the allegations contained in paragraph 56 of the plaintiff's first amended complaint.

57. The defendant neither admits nor denies the allegations contained in paragraph 57 of the plaintiff's first amended complaint as it calls upon the defendant to arrive at a legal conclusion.

58. The defendant denies the allegations contained in paragraph 58 of the plaintiff's first amended complaint.

59. The defendant denies the allegations contained in paragraph 59 of the plaintiff's first amended complaint.

60. The defendant denies the allegations contained in paragraph 60 of the plaintiff's first amended complaint.

WHEREFORE, the defendant denies that the plaintiff is entitled to recovery in any amount.

THIRD AFFIRMATIVE DEFENSE

By way of affirmative defense, the defendant says that if the plaintiff suffered injuries or damage, as alleged in the complaint, such injuries or damage were caused by someone for whose conduct the defendant was not and is not legally responsible.

FOURTH AFFIRMATIVE DEFENSE

By way of affirmative defense, the defendant says that the plaintiff, by his own conduct and actions and/or by the conduct and actions of his agents and servants, cannot recover in this action.

FIFTH AFFIRMATIVE DEFENSE

By way of affirmative defense, the defendant says that the plaintiff, by his conduct and actions and/or by the conduct and actions of his agents and servants, is estopped from recovering any judgment against the defendant.

SIXTH AFFIRMATIVE DEFENSE

By way of affirmative defense, the defendant says that the plaintiff has failed to commence this action within the time afforded by the pertinent statutes of the Commonwealth of Massachusetts and therefore cannot maintain this action.

SEVENTH AFFIRMATIVE DEFENSE

By way of affirmative defense, the defendant says that the injuries or damages alleged were caused in whole or in part by the negligence of the plaintiff.

EIGHTH AFFIRMATIVE DEFENSE

By way of affirmative defense, the defendant says that the plaintiff is guilty of contributory negligence and that the damages, if any, recovered by the plaintiff from defendant should be reduced in proportion to the said negligence of the plaintiff in accordance with M.G.L., Ch. 231, § 85.

NINTH AFFIRMATIVE DEFENSE

By way of affirmative defense, the defendant says that the negligence of the plaintiff was greater than the alleged negligence of the defendant and that such negligence of the plaintiff contributed to his alleged injuries and, therefore, the plaintiff is barred from recovery under M.G.L. Ch. 231, § 85.

TENTH AFFIRMATIVE DEFENSE

By way of affirmative defense, the defendant says that if the plaintiff was injured, it was as a result of the plaintiff's breach of his duty to exercise a high degree of care to protect and insure his own safety.

ELEVENTH AFFIRMATIVE DEFENSE

By way of affirmative defense, the defendant says that the defect alleged in the plaintiff's complaint was open and obvious and that, therefore, the plaintiff can not recover.

TWELFTH AFFIRMATIVE DEFENSE

By way of affirmative defense, the defendant says that the plaintiff is not entitled to recover because of his failure to mitigate damages.

THIRTEENTH AFFIRMATIVE DEFENSE

By way of affirmative defense, the defendant says that if the plaintiff was injured, it was as a result of his breach of his duty to exercise a high degree of care to protect and insure his own safety.

FOURTEENTH AFFIRMATIVE DEFENSE

By way of affirmative defense, the defendant states that the plaintiff failed to comply with applicable notice requirements under the statutes by which plaintiff seeks recovery.

FIFTEENTH AFFIRMATIVE DEFENSE

By way of affirmative defense, the defendant states that the plaintiff's alleged accident took place on a natural accumulation of snow and ice for which the defendant cannot be held legally liable.

SIXTEENTH AFFIRMATIVE DEFENSE

By way of affirmative defense, the defendant denies that it had notice of any alleged defective condition.

SEVENTEENTH AFFIRMATIVE DEFENSE

By way of affirmative defense the defendant states that this court lacks subject matter jurisdiction over this case.

EIGHTEENTH AFFIRMATIVE DEFENSE

By way of affirmative defense the defendant states that this court lacks subject matter jurisdiction over this case.

NINETEENTH AFFIRMATIVE DEFENSE

By way of affirmative defense the defendant states that venue is improper.

TWENTIETH AFFIRMATIVE DEFENSE

By way of affirmative defense the defendant states that process and service of process were deficient.

Respectfully submitted,
LINCOLN FRANKLIN, LLC.,
By its attorneys,

/s/John P. Knight /s/Ralph C. Sullivan
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